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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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| In the Matter of |) | |
| 1993 Annual Access Tariff Filings |) | CC Docket No. 93-193, Phase I |
| 1994 Annual Access Tariff Filings |) | CC Docket No. 94-65 |
| AT&T Communications |) | CC Docket No. 93-193, Phase II |
| Tariff F.C.C. Nos. 1 and 2 |) | |
| Transmittal Nos. 5460, 5461, 5462 and 5464 |) | |
| Bell Atlantic Telephone Companies |) | CC Docket No. 94-157 |
| Tariff F.C.C. No. 1, Transmittal No. 690 |) | |
| NYNEX Telephone Companies |) | DA 95-1485 |
| Tariff F.C.C. No. 1, Transmittal No. 328 |) | |

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BELL ATLANTIC ¹ REPLY

Incredibly, the only party that opposed Bell Atlantic's direct case, MCI, ² fails to so much as acknowledge the appeals court decision that governs this remand proceeding. ³ Instead, MCI continues to press arguments that have already been rejected by the D.C. Circuit. As a result, MCI's repetition of these arguments here also must be rejected.

As documented in its direct case, Bell Atlantic's exogenous treatment of costs associated with the adoption of Statement of Financial Accounting Standards 106

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² MCI Telecommunications Corp. Opposition to Direct Cases (filed Sept. 13, 1995) ("MCI Opposition").

³ *Southwestern Bell Telephone Co. v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

("SFAS 106") was consistent with the Commission's rules in place at the time and with the Court's interpretation of those rules. Consequently, the Commission should close its investigation without requiring any modification of Bell Atlantic's tariffs.

1. The studies relied on by Bell Atlantic to eliminate any potential double counting in GNP-PI are conservative and reasonable.

MCI's primary complaint is with Bell Atlantic's and other local exchange carriers' ("LECs") reliance on studies by Professor Andrew Abel and Peter Neuwirth, generally referred to as the "Godwins Studies."⁴ As previously explained, these studies show that Bell Atlantic's adjustment to eliminate any double counting of the impact of SFAS 106 on GNP-PI is correct. MCI offers nothing to undermine the studies' conclusions.

Instead, MCI complains that these studies were already rejected by the Commission in an earlier round of these proceedings.⁵ The D.C. Circuit, however, expressly found that the Commission's rejection of these studies was improper.⁶ Astonishingly, MCI fails to address or even cite the appeals court decision and instead blindly repeats criticisms of these studies that were specifically rejected by the Court.

For example, contrasting the two studies of GNP-PI double counting relied on by the LECs, MCI claims that because of their "diametrically opposed assumptions, the

⁴ See Summary of Bell Atlantic Direct Case at 3-4; Bell Atlantic Direct Case at 21-22 (filed Aug. 14, 1995).

⁵ MCI Opposition at 2. Although additional reports are unnecessary, the record here includes an update that confirms the conservativeness and reasonableness of the original studies and finds that the actual recovery of additional SFAS 106 costs through GNP-PI was not materially different than estimated in the original study. "Perspectives on Analysis of Impact of SFAS 106 on GNP-PI" at 5, Attachment A to the Direct Case of the United States Telephone Association ("USTA") (filed Aug. 14, 1995) ("Perspectives").

⁶ *Southwestern Bell*, 28 F.3d at 171-172.

Commission clearly could not arbitrarily conclude that one or the other study was appropriate.”⁷ The D.C. Circuit found this argument to be illogical and instead found that the variance between the studies’ methods made the results more reliable, not less :

[T]o the extent that the FCC concluded that because the studies began with different assumptions, neither could be relied upon, its decision was quite illogical. Given the difficulty of verifying the assumptions that must underlie any such analysis it was natural for the LECs to cover a range of possibilities. The substantial identity of results in the face of widely varying assumptions tended simply to show that the outcome was insensitive to this variation. That rendered the conclusions more robust, not less.⁸

MCI also complains that the Godwins Studies rely on “unverifiable assumptions.”⁹

Again, the appeals court has already rejected this very argument and found that the Commission could reject the studies only “if there was no way of obtaining even conservative estimates.”¹⁰ In fact, the studies conduct “both an actuarial analysis and a macroeconomic analysis” that is “performed in a very conservative manner” to ensure that the impact of SFAS 106 on the GNP-PI was not understated.¹¹ MCI offers no substantive argument to discredit these results.

⁷ MCI Opposition at 3.

⁸ *Southwestern Bell*, 28 F.3d at 17.

⁹ MCI Opposition at 5. MCI suggests that various assumptions in the Godwins Studies yield “extremely wide ranging results.” *Id.* at 3. In fact, as previously explained, there is only one basic result -- the increase in GNP-PI caused by SFAS 106 is no more than 0.0124% . Perspectives at 2. MCI presumably is referring to ranges produced by sensitivity analyses of the original study. These analyses “were not intended to represent the ranges of plausible parameter values” and in fact they confirm the appropriateness of the original result. *Id.* at 4-5. .

¹⁰ *Southwestern Bell*, 28 F.3d at 172.

¹¹ Perspectives at 2.

2. **Other MCI complaints are also without merit.**

MCI also criticizes¹² differences in the detailed factual predicates underlying the LEC filings, such as the average retirement age¹³ and the level of employee participation in benefit plans.¹⁴ MCI does not specifically contest the accuracy of these factual predicates, however.¹⁵ Instead, it argues that the Commission should impose arbitrary standardized costs for all companies, and disallow benefit costs in excess of that standard. A rule change that denies companies the ability to recover such legitimate costs of providing service would be improper without justification. The Commission need not reach that issue, however, because such exclusion is clearly not a part of the rules that were in place

¹² See MCI Opposition at 6.

¹³ MCI misstates Bell Atlantic's *average age of its retirees* and then improperly compares it to Bell South's *average age at retirement*. Compare MCI Opposition at 6 with Bell Atlantic Direct Case at Exhibit 26-A (p. 25) and Exhibit 26-B (p. 28). Contrary to MCI's calculation, the actual average retiree age is the weighted average of associate and management average retiree ages.

¹⁴ MCI is wrong to suggest that Bell Atlantic did not address employee participation levels in its direct case. Bell Atlantic's benefit calculation was based on the actual number of participants in its benefit plans. See Bell Atlantic Direct Case at 1. For Bell Atlantic, "substantially all" of the company's employees are covered under these plans. See Bell Atlantic Direct Case, Exhibit 17-5-A at 29; Declaration of John D. Broten, ¶ 5 (attached).

¹⁵ To the extent MCI is implying that Bell Atlantic's calculation of costs was improper, it is wrong. Bell Atlantic's costs are in accordance with the requirements of SFAS 106 and are based on the provisions in its benefit plans, as calculated by accredited actuaries and audited by independent auditors. See Declaration of John D. Broten, ¶¶ 5-8.

at the time these tariffs were filed. It is too late to do as MCI seems to suggest, and to retroactively impose a new rule at the close of this investigation.¹⁶

Finally, MCI argues that SFAS 106 costs incurred prior to January 1, 1993, should not be allowed exogenous treatment because early adoption is within the control of the carrier.¹⁷ Again, this is simply inconsistent with the D.C. Circuit decision and the Commission rules in place at the time. The court of appeals rejected the argument that accounting changes are subject to an additional “control test.” The court held that a Financial Accounting Standards Board (“FASB”) rule change adopted by the Commission is, by definition, “not a change under the control of the carrier.”¹⁸ Bell Atlantic’s adoption of SFAS 106 in 1991 was consistent with the Commission’s adoption order. The Commission mandate for adoption of SFAS 106 did not limit adoption of the accounting change to periods subsequent to January 1, 1993. In fact, that date was the *latest* point such adoption could take place.¹⁹ In its adoption order, the Commission cited the FASB admonition that earlier adoption of SFAS 106 was “encouraged.”²⁰ As noted above, the Commission is not free to retroactively impose a new rule at the close of this investigation

¹⁶ See *Southwestern Bell*, 28 F.3d at 173 (while FCC may amend rules going forward, it is not free to concoct “a new rule in the guise of applying the old”); *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988) (“[A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.”).

¹⁷ MCI Opposition at 7.

¹⁸ *Southwestern Bell*, 28 F.3d at 170.

¹⁹ *Southwestern Bell, GTE Service Corp., Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106*, 6 FCC Rcd 7560, ¶ 3 (Com. Car. Bur. 1991).

²⁰ *Id.* at ¶ 2.

by adopting a *post hoc* control test for exogenous treatment that contradicts the Commission's authorization given more than three years ago.

CONCLUSION

Based on the foregoing and the prior pleadings filed herein, the Commission should conclude its investigations without requiring modifications to Bell Atlantic's tariffed rates.

Respectfully submitted,

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September 28, 1995

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DECLARATION OF JOHN D. BROTEN

I, John Broten, declare the following:

1. I am the Director for Financial and Affiliate Issues within the External Affairs Department of Bell Atlantic Network Services, Inc. My responsibilities include the preparation of the exogenous cost calculations for Bell Atlantic's interstate access tariff filings, as well as the management and oversight of interstate regulatory financial and accounting issues. In this capacity, I am familiar with Bell Atlantic's accounting for costs associated with the adoption of Statement of Financial Accounting Standards No. 106, "Employers' Accounting for Postretirement Benefits Other than Pensions" (SFAS 106), including calculations of

exogenous costs in the tariff filings at issue here. I submit this declaration to rebut suggestions by MCI that Bell Atlantic's SFAS 106 costs were not appropriately calculated.

2. SFAS 106 requires accrual accounting for all postretirement benefits other than pensions. Under the prescribed accrual accounting method, the Company's obligation for these postretirement benefits is to be fully accrued by the date employees attain full eligibility for such benefits. Prior to the adoption of SFAS 106, the cost of these benefits was not recognized until an actual payment was made -- either to retirees or to a trust fund.

3. Pursuant to Generally Accepted Accounting Principles ("GAAP") and FCC requirements, Bell Atlantic adopted SFAS 106 effective January 1, 1991. Bell Atlantic adopted as early as possible because, as recognized by the FCC, such adoption was encouraged by the Financial Accounting Standards Board ("FASB"), and because the accrual accounting mandated by SFAS 106 reflects a more accurate view of Bell Atlantic's expected obligation to provide future retiree benefits.

4. Bell Atlantic adopted SFAS 106 for both regulatory and external reporting purposes. For external reporting, Bell Atlantic elected to immediately recognize the accumulated postretirement benefit obligation for current and future retirees, net of the fair value of benefit plan assets and previously recognized costs

("transition obligation"). For interstate regulatory reporting purposes, the FCC required that the transition obligation be amortized. Bell Atlantic is amortizing this amount over the expected remaining service life of the employees qualifying for SFAS 106 benefits at the effective date of adoption (approximately 17 years).

5. Substantially all of the Company's management and associate employees are covered under postretirement health and life insurance benefit plans. Determination of cost for the postretirement health benefits is based upon comprehensive hospital, medical, surgical, and dental benefit provisions. The determination of cost for postretirement life insurance benefits is based on a benefit formula which reflects annual basic pay at retirement.

6. The calculation of postretirement benefit costs was performed by an independent actuarial firm, Actuarial Sciences Associates, Inc. (ASA). ASA's calculations were encompassed in several actuarial reports, which, consistent with generally accepted actuarial principles and practices, were attested to by an actuary accredited by the Society of Actuaries.

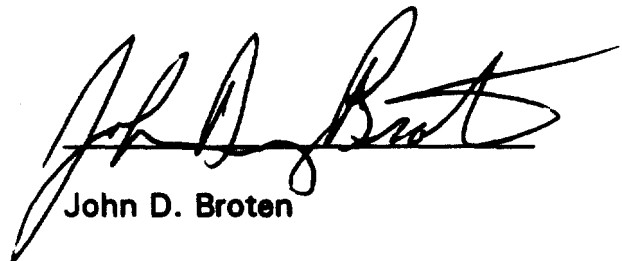
7. After the close of Bell Atlantic's books for calendar year 1991, Coopers and Lybrand, Bell Atlantic's external auditing firm, conducted its normal end-of-year audit of Bell Atlantic's financial accounting books, including the journal entries and the assumptions underlying the calculation of costs under SFAS 106. Coopers and Lybrand determined that Bell Atlantic's financial statements "present

fairly, in all material respects, the consolidated financial position of Bell Atlantic Corporation and subsidiaries," and these statements are "in conformity with generally accepted accounting principles."¹ Specifically, Coopers and Lybrand made no findings questioning the accounting for costs associated with SFAS 106.

8. The amount of exogenous cost for SFAS 106 in the Bell Atlantic tariff filings under review here is predicated on these total SFAS 106 costs recorded by Bell Atlantic Corporation in 1991, less any pay-as-you-go and previously recognized amounts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 28, 1995.



John D. Broten

¹ Bell Atlantic 1991 Annual Report, Report of Independent Accountants, Coopers and Lybrand, pg. 14.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Bell Atlantic Reply" was served this 28th day of September, 1995 by first class mail, postage prepaid, on the parties on the attached list.


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